



August 22, 2001

Mr. Brett Bray
Division Director
Motor Vehicle Division
Texas Department of Transportation
P.O. Box 2293
Austin, Texas 78768

OR2001-3716

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151080.

The Texas Department of Transportation (the "department") received two requests for all information held by the department pertaining to two specified licensees. You state that you are providing the requestor with the responsive information that does not appear to be subject to an exception to disclosure. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

In accordance with section 552.305(d), you notified both specified entities who were the subject of the request for information of the requests and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). An interested third party is allowed 10 business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither specified entity has submitted any comments to this office explaining why the requested

information should not be released. *See* Gov't Code § 552.110; *see also* Open Records Decision Nos. 552 at 5 (1990) (stating that attorney general will grant exception to disclosure under statutory predecessor to Gov't Code § 552.110(a) if third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we only address the department's claimed exceptions to disclosure.

You claim that social security numbers contained within the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 51.251 of the Occupations Code.¹ The relevant note following section 51.251 provides:

[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

Occupations Code § 51.251. The social security numbers at issue here appear on application materials for licenses issued by the department. The licenses would authorize applicants to maintain motor vehicle dealerships. Accordingly, we find that the social security numbers at issue are confidential under section 51.251 of the Occupations Code and, therefore, must be withheld from disclosure pursuant to section 552.101 of the Government Code.

You also claim that the submitted information contains information excepted from disclosure pursuant to section 552.101 in conjunction with the common law right to privacy. Section 552.101 encompasses the common law right to privacy. Information is protected under the common law right to privacy when (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). After reviewing the submitted information, we find that one of the documents which we have marked is confidential based on a common law right to privacy. However, because the

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

common law right to privacy protects the rights of individuals and not business entities, we do not believe that any of the remaining portions of the submitted information are likewise confidential. *See* Open Records Decision Nos. 620 (1993) (corporation has no common law privacy interest in its financial information), 192 (1978); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). Thus, the licensees have no right of privacy in the submitted information. Accordingly, with the exception of the document which we have marked, the submitted information may not be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy.

You also claim that driver's license and dealer plate numbers contained within the submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold from disclosure the driver's license, vehicle identification, and dealer plate numbers contained within the submitted information that are issued by an agency of this state pursuant to section 552.130 of the Government Code.

Finally, you request that this office issue a previous determination allowing the department to withhold information that is excepted from disclosure pursuant to section 552.101 in conjunction with section 51.251 of the Occupations Code, section 552.101 in conjunction with the common law right to privacy, and section 552.130 of the Government Code. We decline to issue such a previous determination at this time.

In summary, you must withhold from disclosure social security numbers contained within the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 51.251 of the Occupations Code. You must withhold the document that we have marked pursuant to section 552.101 in conjunction with the common law right to privacy. You must withhold from disclosure driver's license, vehicle identification, and dealer plate numbers issued by an agency of this state pursuant to section 552.130 of the

Government Code. We decline to issue a previous determination for this information at this time. You must release all other submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

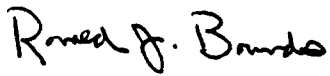
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive, slightly slanted style.

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 151080

Enc. Marked documents

cc: Mr. Barkley Bonine
P.O. Box 34173
San Antonio, Texas 78265-4173
(w/o enclosures)